IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 24490 of 2007(M)

CMA.2/2006 of SUB COURT, TIRUR
OS.224/2005 of M.C.,PARAPPANANGADI

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PETITIONER:

PAZHERI MUHAMMEDALI,S/O.KUNHAPPUTTY,
PAZHERI HOUSE,P.O VALLIKUNNU,TIRURANGADI,
MALAPPURAM DISTRICT.

BY ADV. SRI.GEORGE THOMAS (MEVADA)
SRI.NINU M.DAS
SMT.VEENA EBBY

RESPONDENTS:

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1. NAROTH PARAMBIL AHAMMED KOYA,
S/O.ABDU RAHIMAN,AGED 34 YEARS,
TIRURANGADI,PERUVALLUR,KERANALLUR,MALAPPURAM DIST.

2. SOUDABI,AGED 28,D/O.KURIKKAL
PEEDIYEKKAL AHAMMAD,AND WIFE OF NAROTH PARAMBIL
ABDUL GAFOOR,ANCHALAKKAL PURAYA HOUSE,TIRURANGADI
PERUVALLUR,KERNALLUR,MALAPPURAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.24490 OF 2007 M

Dated this the 13th August, 2007.

JUDGMENT

This writ petition is filed challenging the order passed in C.M.A.2/06 of the Subordinate Judge's Court, Tirur. The plaintiff is the writ petitioner before this court. The plaintiff has moved a suit before the court below for eviction of the tenant with arrears of rent. The suit was instituted in the year 2005. Subsequently the plaintiff moves an application before the court and the court dismissed his application for issuance of a commission and passed an order against the plaintiff from forcibly evicting the defendants from the plaint schedule property. As far as the suit to start with is concerned a question of injunction cannot be envisaged because the tenant was in rightful possession of the property. It is is the case of the plaintiff that on 26.12.2005 the defendant voluntarily surrendered possession of the premises to the plaintiff and thereby the plaintiff came into possession of the property. Or in other words it is a case of surrender of the premises. The court below did not agree with the same when the defendants resisted it. In the ordinary course of human conduct when a litigation is filed for eviction with arrears of rent and the parties

compromise the matter or surrender the property only through the intervention of the court finalities are obtained. The relationship between the parties have not been cordial. So, unless there is some intrinsic acceptable evidence to prove the surrender one cannot lean in favour of the landlord. Learned counsel for the writ petitioner very strongly contends before me that had the court below allowed an application for the issuance of a commission the factum would have been proved and therefore the opposition made by the defendants in the suit leads to an inference that they are not speaking the truth. As far as the case of this nature is concerned that too when the persons are fighting against each other, as I stated earlier, there should have been at least a piece of paper to prove surrender of the premises. In the absence of it issuance of a commission may not be helpful to prove the surrender of the property. So under these circumstances, I am not inclined to interfere with the order passed by the courts below and therefore the writ petition is dismissed. But considering the contest between the parties and the present contention of injunction it is only just and reasonable to direct the trial court to expeditiously try

and dispose of the case within a period of three months from today.

M.N.KRISHNAN
Judge

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